

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICOLE CRAINE,

Plaintiff,

- against -

THE JAMES BEARD FOUNDATION, INC.

Defendant.

Docket No. 18-cv-12133

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Nicole Craine (“Craine” or “Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendant The James Beard Foundation, Inc. (“James Beard” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Shelly Worrell, owned and registered by Craine, a New York-based professional photographer. Accordingly, Craine seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Craine is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 120 Thames Street, Unit 304, Brooklyn, NY 11237.

6. Upon information and belief, James Beard is a domestic corporation duly organized and existing under the laws of the State of New York, with a place of business at 167 West 12th Street, New York, NY 10011.

7. At all times material hereto, James Beard has owned and operated a website at the URL: <https://www.jamesbeard.org> (the “Website”).

8. At all times material hereto, James Beard has owned and operated an Instagram page at the URL: <https://www.instagram.com/beardfoundation/?hl=en> (the “Instagram Page”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. On or about August 20, 2017, Craine photographed Shelley Worrell, the Brooklyn-based creator of CaribBeing, at Labay Market (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Craine then licensed the Photograph to the NEW YORK TIMES.

11. On or about August 31, 2017, the NEW YORK TIMES published an article entitled “*How Shelley Worrell, Creator of CaribBeing, Spends Her Sundays*” at URL: <https://www.nytimes.com/2017/08/31/nyregion/shelley-vidia-worrell-caribbeing.html> The NEW

YORK TIMES article prominently featured the Photograph. Attached as Exhibit B is a true and correct copy of the NEW YORK TIMES article.

12. Craine is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

13. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-076-137, with effective date of November 10, 2017 (the “137 Registration”). Attached as Exhibit C is a true and correct copy of the 137 Registration.

14. The content title of the Photograph, as listed on the face of the 137 Registration, is “8.20.17_NicoleCraine_ShelleyWorrell_19.jpg.”

B. Defendant’s Infringing Activities

15. On or about October 1, 2018, James Beard ran an article on the Website entitled *A Day of Island Hopping in Brooklyn’s Little Caribbean*. See URL <https://jamesbeard.org/blog/a-day-of-island-hopping-in-brooklyns-little-caribbean> (the “Article”).

16. The Article prominently featured the Photograph. A true and correct copy of the Article is attached hereto as Exhibit D.

17. On or about October 1, 2018, James Beard also displayed the Photograph on its Instagram Page. A true and correct copy of James Beard’s Instagram Page which displays the Photograph is attached hereto as Exhibit E.

18. James Beard did not license the Photograph from Plaintiff for its Article or Instagram Page.

19. James Beard did not have Plaintiff’s permission to publish the Photograph on its Website or Instagram Page.

20. Prior to publishing the Photograph on the Website and Instagram Page, there was no communication between Plaintiff and Defendant.

21. Prior to the filing of this lawsuit, there was no communication between Plaintiff and Defendant.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above.

23. James Beard infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website and Instagram Page.

24. James Beard is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

25. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

26. Upon information and belief, the foregoing acts of infringement by Defendant have been willful or in reckless disregard of Plaintiff's rights.

27. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

28. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

29. Plaintiff is further entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant James Beard be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504(c);
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her attorney's fees and full costs pursuant to 17 U.S.C. § 505.
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 21, 2018

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